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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 WILD HORSE EDUCATION, a non-profit
14 corporation, and LAURA LEIGH,
individually,

15 Plaintiffs,

16 v.

17
18 UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF LAND
19 MANAGEMENT, and JON RABY, Nevada
State Director of the Bureau of Land
20 Management,

21 Defendants.

CASE NO. 3:23-cv-372-LRH-CLB
**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 1. Plaintiffs respectfully bring this case to challenge the United States Department of
2 Interior, Bureau of Land Management (BLM)’s removal of wild, free-roaming horses and burros
3 from the Antelope and Triple B Complexes in violation of the Wild Free-Roaming Horses and
4 Burros Act, 16 U.S.C. § 1331, et seq., which mandates that “excess wild free-roaming horses and
5 burros . . . be **humanely** captured and removed” and then placed for “humane treatment and care”
6 with private individuals or entities. 16 U.S.C. § 1333(b)(2)(B) (emphasis added); 43 CFR 4700.0-
7 05(e). Despite this clear directive, during the years 2019-2023, over 10,000 wild horses have been
8 removed by helicopter in the Antelope and Triple B Complexes. Wild horses, including foals,
9 suffered and died cruel and inhumane deaths because of the BLM’s removal actions, including
10 deaths resulting from fractured skulls, broken necks, leg fractures, lacerations, and more.

11 2. During gather activities in the Antelope Complex, Plaintiffs unsuccessfully
12 attempted to convince the BLM to suspend gather operations during excessive Heat Index
13 warnings, when catastrophic injury rates rise. They watched in horror, as the BLM’s helicopters
14 chased stallions, mares, and foals, causing such panic that many animals were injured or broke
15 their legs and had to be euthanized. At least one stallion was forced to stumble around on a broken
16 leg, in obvious pain and agony, until a BLM official finally intervened after more than thirty
17 minutes.

18 3. Plaintiff WILD HORSE EDUCATION and its members and supporters, including
19 Founder and Director LAURA LEIGH, have suffered extensive emotional trauma because of the
20 BLM’s violation of the humane handling requirements set forth in the Wild and Free-Roaming
21 Horses and Burros Act (Wild Horses Act), in violation of their well-established First Amendment
22 Right to observe these horses being treated humanely.

23 4. Plaintiffs bring this suit not only to enforce the Wild Horses Act’s humane handling
24 requirement, including the Standards for Wild Horse and Burro Gathers and Standards for Off-
25 Range Corral Facilities, Transportation, and Adoption/Sale Events outlined in the BLM’s
26 Comprehensive Animal Welfare Program (CAWP), but also to force the BLM to promulgate these
CAWP standards as enforceable rules in compliance with the Administrative Procedures Act. 5

1 U.S.C. § 553. In addition, Plaintiffs challenge the BLM’s decision to rely on a six-year-old
2 Environmental Assessment (EA)—Antelope and Triple B Complexes Gather Plan Environmental
3 Assessment, DOI-BLM-NV-E030-2017-0010-EA (2017)—to support its decision to gather horses
4 from the Antelope Complex without making a Determination of NEPA Adequacy, as required by
5 the National Environmental Policy Act (NEPA) and the Secretary’s NEPA regulations. A
6 Determination of NEPA Adequacy requires that the Secretary justify its decision to rely on an
7 existing EA by substantiating its decision with some analysis of adequacy and documentation that
8 the circumstances or the present action are like those of the prior action. Plaintiffs further challenge
9 the BLM’s decision to rely on the six-year-old EA in violation of the Wild Horse Act’s immediacy
10 requirement. *Friends of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022).

11 JURISDICTION AND VENUE

12 5. This Court has jurisdiction over the subject matter of this action pursuant to 5
13 U.S.C. § 706, 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

14 6. Venue is proper in this district court pursuant to 28 U.S.C. § 1391. The BLM has
15 sufficient contacts to subject it to personal jurisdiction in this district.

16 THE PARTIES

17 7. Plaintiff WILD HORSE EDUCATION is a national non-profit corporation
18 dedicated to research, journalism, and public education concerning the activities and operations of
19 federal and state management of the free-roaming wild horse and burro populations. Wild Horse
20 Education’s principal place of business is 216 Lemmon Drive, # 316, Reno, N.V., 89506. Wild
21 Horse Education has more than 150,000 members and educates and informs the public about wild
22 horses and burros through articles, photographs, videos, and sharing data and other information.
23 Wild Horse Education also frequently submits comments on Herd Management Area Plans,
24 Environmental Assessments, and other wild horse management documents and hearings made
25 available for public comment. Advocating for the wild horses and burros in the Antelope and Triple
26 B Complexes is an important issue for Wild Horse Education and will be always in the future.

1 8. Plaintiff WILD HORSE EDUCATION and its members, supporters, and staff have
2 a long-standing interest in wild, free-roaming horses and burros and routinely advocate for wild
3 horses and burros in Nevada. If they had been given the opportunity, Nonprofit Plaintiffs would
4 have submitted comments to BLM regarding the need for an updated EA for the Antelope and
5 Triple B Complexes.

6 9. Plaintiff WILD HORSE EDUCATION and its members, supporters, and staff
7 would have participated rigorously in the public participation process required for notice-and-
8 comment rulemaking under the Administrative Procedures Act if the BLM had complied with the
9 law and promulgated the CAWP standards as a rule.

10 10. Plaintiff WILD HORSE EDUCATION'S members, supporters, and staff visit the
11 Antelope and Triple B Complexes for photography, observing wildlife, and other recreational and
12 professional pursuits. Plaintiff's members, supporters, and staff gain aesthetic enjoyment from
13 observing, attempting to observe, hearing, seeing evidence of, and studying wild horses and burros.
14 The opportunity to possibly view wild horses and burros, or signs of them, in these areas is of
15 significant interest and value to Plaintiff's members, supporters, and staff, and increases their use
16 and enjoyment of Nevada's public lands. Plaintiff's members, supporters, and staff have engaged
17 in these activities in the past and have specific plans to do so again in the future.

18 11. Plaintiff WILD HORSE EDUCATION'S members and supporters are adversely
19 impacted by the gathering and removal of wild horses and burros from the Antelope and Triple B
20 Complexes. Plaintiff's members also have an interest in the health and humane treatment of
21 animals, and work to rehabilitate sick and injured wildlife, including horses and burros. Plaintiff's
22 members, staff, volunteers, and supporters have engaged in these activities in the past and intend
23 to do so again soon.

24 12. Plaintiff WILD HORSE EDUCATION, as well as its members, supporters, and
25 staff, is dedicated to ensuring the long-term survival of the wild, free-roaming horses and burros
26 throughout the contiguous United States, and specifically in Nevada, and to ensuring that
Defendants comply with all applicable state and federal laws related to the survival and humane

1 treatment of wild horses and burros in Nevada. In furtherance of these interests, Plaintiff's
2 members, supporters, and staff have worked, and continue to work, to protect and advocate for
3 wild horses and burros in Nevada and throughout the contiguous United States.

4 13. The interests of Plaintiff WILD HORSE EDUCATION's members, supporters, and
5 staff have been, and will continue to be, injured by Defendants' improper and inhumane gather
6 and removal of wild horses and burros in the Antelope and Triple B Complexes. The interests of
7 Plaintiffs' members, supporters, and staff have been, and will continue to be, injured by
8 Defendants' failure to comply with their obligations under the Wild Horse Act, NEPA, APA, and
9 First Amendment in gathering, removing, and processing wild, free-roaming horses and burros in
10 gruesome, inhumane, and completely hidden ways in the Antelope and Triple B Complexes
11 pursuant to an outdated six-year-old EA.

12 14. The injunctive relief requested provides the only remedy that can redress the
13 injuries of Plaintiff WILD HORSE EDUCATION, including of its members, supporters,
14 volunteers, and staff. The relief requested by Plaintiffs, if granted, would require Defendants to
15 comply with the requirements of the Wild Horse Act, NEPA, APA, and the First Amendment
16 before further gathering and removing wild, free-roaming horses and burros from the Antelope
17 Complex. The relief requested by Plaintiffs, if granted, would reduce the number of wild, free-
18 roaming horses and burros needlessly injured, killed, or removed by Defendants.

19 15. Plaintiff LAURA LEIGH is the Founder and President of Plaintiff WILD HORSE
20 EDUCATION. In addition, Ms. Leigh works with multiple non-profit organizations engaged in
21 public land issues and provides in-field documentation and commentary on public land issues such
22 as wild horse and burro gathers and removals. Ms. Leigh is also a free-lance photojournalist, whose
23 work has appeared internationally in media broadcast outlets, such as CNN, BBC/ITV, ABC,
24 Common Dreams, and CounterPunch. Ms. Leigh has visited, observed, and photographed the wild
25 horses and burros at the Antelope Complex at least once a year since 2009. Ms. Leigh experiences
26 great enjoyment from watching and monitoring individual horses and burros in the Antelope and
Triple B Complexes. Of particular interest, Ms. Leigh commonly seeks out and photographs

1 unique stallions in the Antelope and Triple B Complexes; she has developed a personal knowledge
2 of these stallions and their bands. Ms. Leigh has also attended, for nearly fifteen years, several
3 wild horse and burro roundups throughout the United States, and frequently reviews photographs
4 and videos from any roundups she is not able to attend in person on a daily basis. When Ms. Leigh
5 recognizes individual horses and burros that she has previously observed as wild, free-roaming
6 horses and burros, she experiences great sadness, but feels it is her responsibility to the animals to
7 observe their treatment and capture and share it with others to educate them on the plight of wild
8 horses and burros. The further gathering and removal of wild horses and burros in the Antelope
9 and Triple B Complexes in cruel and inhumane ways will adversely affect the substantial
10 recreational, aesthetic, and conservational interests of Ms. Leigh.

11 16. Defendant JON RABY is Nevada State Director of the BLM, and is charged by
12 federal statute with managing, administering, and protecting the wild horses and burros in the State
13 of Nevada, including the Antelope and Triple B Complexes, pursuant to the Wild Horse Act.

14 17. Defendant DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGE-
15 MENT is charged by federal statute to manage administer and protect the wild horses and burros
16 in the State of Nevada, including the Antelope Complex, pursuant to the Wild Free-Roaming
17 Horses and Burros Act, 16 U.S.C. §§ 1331–1340.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 18. Plaintiffs WILD HORSE EDUCATION and LAURA LEIGH submitted comments
20 on the relevant Antelope and Triple B Complexes Gather Environmental Assessment, identified
21 as DOI-BLM-NV-E030-2017-0010-EA in 2017.

22 19. Among other matters, WILD HORSE EDUCATION commented on issues
23 involving handling wild horses during capture. WILD HORSE EDUCATION noted an actual
24 foaling season for the Antelope Complex herds had not been identified by the agency. The lack of
25 clear identification of foaling/breeding season in wild horses creates a real danger to the health and
26 safety of mares and foals, because the BLM will roundup horses in this area during actual peak
foaling season, which begins in February and continues through the end of July. WILD HORSE

1 EDUCATION requested that the BLM extend its prohibition on capture by helicopter drive
2 trapping for the Antelope Complex from February 1 to August 15, and not follow the arbitrary
3 March 1 to July 1 prohibition the agency uses now for all HMAs, regardless of the true foaling
4 season for each HMA.

5 20. In its public comment, WILD HORSE EDUCATION also noted that the BLM had
6 not identified a data-based foaling season in any underlying Herd Management Area Plan (HMAP)
7 and had not identified it in its 2017 Environmental Assessment either.

8 21. Plaintiff LEIGH brought litigation involving abusive actions into the court (and
9 other matters) and the court warned BLM in numerous instances (Triple B-2011, Jackson
10 Mountain-2012, Owyhee Complex-2013) concerning inappropriate conduct during capture.

11 22. In 2015 the BLM formally adopted the Comprehensive Animal Welfare Program
12 (CAWP) and informed Plaintiff LEIGH that the BLM would conduct annual reviews of the CAWP
13 and the BLM's implementation of the CAWP. The BLM published an assessment tool on its
14 website, so the public understood how the BLM would implement the CAWP.

15 23. From 2016-2021, Plaintiff LEIGH has requested a copy of annual CAWP reviews
16 through the Freedom of Information Act (FOIA). Each year, the BLM has responded that it could
17 not identify any responsive documents to her FOIA request. Therefore, on information and belief,
18 the BLM never conducted annual reviews of CAWP.

19 24. During the 2021 Antelope Complex operation, Plaintiff LEIGH met with Holle
20 Waddel (Bureau Chief) and the newly hired Jerrie Bertola (CAWP Lead) to discuss issues relating
21 to welfare and was told that follow-up would occur, but this never took place.

22 25. Jerrie Bertola confirmed that no review of CAWP was done from 2017-2021, that
23 none would be done for those years, that no annual CAWP reviews would be conducted, and that
24 no programmatic review of CAWP was planned.

25 26. Plaintiffs WILD HORSE EDUCATION and LAURA LEIGH have requested, on
26 multiple occasions, to be alerted if the BLM decides to review or revise the CAWP and its
standards. On August 25, 2021, Plaintiff LEIGH specifically requested that the BLM permit

1 Plaintiffs the opportunity to contribute to the After-Action Review process for roundup activities
2 in Nevada to assist with CAWP compliance issues. The BLM never responded to any of Plaintiffs'
3 requests for public participation.

4 27. In 2022, Plaintiff WILD HORSE EDUCATION, conducted its own review of
5 CAWP compliance and published a three-part review of the BLM CAWP program for its members
6 and supporters, as well as the public, as part of its public education mission.

7 28. Prior to the start of the removal action for the Antelope Complex, the BLM issued
8 two press releases indicating the BLM had made a Determination of NEPA Adequacy as required
9 by 43 CFR § 46.120. The press releases linked to the Determination of NEPA Adequacy, but the
10 links were broken, and no documents were attached.

11 29. On July 7, 2023, Plaintiff LEIGH informed the Nevada BLM's public affairs office
12 that the provided link to the Determination of NEPA Adequacy was broken. The public affairs
13 office advised Plaintiff LEIGH that the BLM had not prepared a Determination of NEPA
14 Adequacy. Instead, the BLM intended to rely on its six-year-old EA to support the 2023 removal
15 action in the Antelope Complex.

16 30. On July 14, 2023, Plaintiffs' counsel sent the BLM a letter advising them of
17 significant, excessive heat and requested that the BLM cease its removal action in the Antelope
18 Complex until temperatures fell below 95 degrees Fahrenheit, as required by CAWP Standards.
19 On this same day, Plaintiffs' counsel called the BLM to request the termination of removal
20 activities until the weather returned to normal conditions. Nobody responded to Plaintiffs' counsel
21 by email, letter, or phone call.

22 31. Plaintiffs have exhausted all administrative remedies.

23 **GENERAL ALLEGATIONS OF FACTS**

24 **A. Wild Free-Roaming Horses and Burros Act**

25 32. Finding that "wild free-roaming horses and burros are living symbols of the historic
26 and pioneer spirit of the West," and that "they contribute to the diversity of life forms within the
Nation and enrich the lives of the American people," Congress enacted the Wild Horses and Burros

1 Act, or “Wild Horse Act” to ensure that “wild-free roaming horses and burros shall be protected
2 from capture, branding, harassment, [and] death,” and will “be considered in the area where
3 presently found, as an integral part of the natural system of the public lands.” 16 U.S.C. § 1331.

4 33. “Wild free-roaming horses and burros” are defined under the Wild Horse Act as
5 “all unbranded and unclaimed horses and burros on public lands of the United States,” which
6 include lands “administered by the Secretary of the Interior through the Bureau of Land
7 Management or by the Secretary of Agriculture through the Forest Service.” *Id.* §§ 1332(b), (e);
8 *see also* 36 C.F.R. § 222.60(b)(13).

9 34. The Wild Horse Act directs the Secretary of the Interior to “manage wild free-
10 roaming horses and burros as components of the public lands ... in a manner that is designed to
11 achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1331.
12 To further ensure this objective, the statute provides that “[a]ll management activities shall be at
13 the minimal feasible level.” 16 U.S.C. § 1333(a).

14 35. The Wild Horse Act also gives the Secretary the ability to remove “excess” wild
15 free-roaming horses and burros from the public range. “[E]xcess animals” are defined in the statute
16 as wild free-roaming horses and burros “which must be removed from an area in order to preserve
17 and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16
18 U.S.C. § 1332(f).

19 36. The BLM’s regulations require that the Secretary establish Herd Management
20 Areas (HMAs) for the maintenance of wild horse and burro herds. 43 C.F.R. § 4710.3-1. In
21 delineating each herd management area, the BLM must consider the appropriate management level
22 for the herd, the habitat requirements of the animals, the relationships with other uses of the public
23 and adjacent private lands, and the constraints contained in § 4710.4, which limits management of
24 wild horses and burros to “the minimum level necessary to attain the objective identified in
25 approved land use plans and herd management area plans.” 43 C.F.R. § 4710.4.

26 37. Before removing excess horses or burros from an HMA, the Secretary must first
determine that 1) an overpopulation of animals exists and 2) that action is necessary to remove

1 excess animals, before *immediately* removing the excess animals. 16 U.S.C. § 1333(b)(2)
2 (emphasis added). The Secretary must determine both of those requirements based on the current
3 inventory of lands, information contained in any land use planning documents, information
4 contained in court ordered environmental impact statements, and any additional information
5 currently available to him/her. *Id.*

6 38. A Gather Plan violates the immediacy mandate of the Wild Horse Act if it permits
7 the removal of excess animals for a ten-year period from its adoption. *See* 16 U.S.C. § 1333(b)(2);
8 *Friends of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022) (invalidating an EA authorizing
9 the phased removal of horses over a ten-year-period).

10 39. Excess horses must be “humanely captured and removed” per the Wild Horse Act’s
11 mandates. 16 U.S.C. § 1333(b)(2)(B).

12 40. “[H]umane treatment” is defined as “handling compatible with animal husbandry
13 practices accepted in the veterinary community, without causing unnecessary stress or suffering to
14 a wild horse or burro.” 43 C.F.R. § 4700.0-5(e). “Inhumane treatment” is defined as “any
15 intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a
16 wild horse or burro and is not compatible with animal husbandry practices accepted in the
17 veterinary community.” 43 C.F.R. § 4700.0-5(f).

18 41. The Secretary delegated responsibility to administer the Wild Horse Act to the
19 BLM. 43 C.F.R. § 4700.0-3.

20 42. On June 30, 2015, the BLM adopted its Comprehensive Animal Welfare Program
21 (CAWP) as “a proactive program for protecting the welfare of wild horses and burros under the
22 agency’s management and protection.” According to the BLM, the CAWP “formalizes standard
23 operating procedures surrounding animal care and handling; establishes formal training programs
24 in animal welfare for BLM personnel, partners and contractors; and implements internal and
25 external assessments for all activities undertaken in the Wild Horse and Burro Program.” *See* BLM
26 Perm. Inst. Memo. 2021-002 (Dec. 18, 2020), available at <https://www.blm.gov/policy/pim-2021-002>. In this regard, BLM has promulgated CAWP Standards for Wild Horse and Burro Gathers

1 and CAWP Standards for Off-Range Corral Facilities, Transportation, and Adoption/Sale Events.

2 43. The CAWP standards address the BLM's plan for humane handling, including
3 requirements for trap and temporary holding facility design, capture and handling, transportation,
4 and care after capture. The standards are also incorporated into helicopter gather contracts as
5 specifications for performance.

6 **B. National Environmental Policy Act**

7 44. A second statute, NEPA, 42 U.S.C. § 4321 et seq., governs decisions by the BLM
8 to gather horses and burros. NEPA requires federal agencies to take a "hard look" at the
9 environmental consequences before carrying out federal actions. *Marsh v. Or. Nat. Res. Council*,
10 490 U.S. 360, 373–74 (1989).

11 45. NEPA serves the dual purpose of, first, informing agency decisionmakers of the
12 significant environmental effects of proposed major federal actions and, second, ensuring that
13 relevant information is made available to the public so that it "may also play a role in both the
14 decision-making process and the implementation of that decision." *See Robertson v. Methow*
Valley Citizens Council, 490 U.S. 332, 349 (1989).

15 46. To meet these goals, NEPA requires a comprehensive Environmental Impact
16 Statement ("EIS") for "major Federal actions significantly affecting the quality of the human
17 environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3.

18 47. To determine whether a proposed action will have significant effects, an agency
19 may prepare an Environmental Assessment ("EA"). 40 C.F.R. § 1501.54. An EA is a "concise
20 public document" that "[b]riefly provide[s] sufficient evidence and analysis for determining
21 whether to prepare an [EIS]." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004) (quoting
22 40 C.F.R. § 1508.9(a)).

23 48. If in its EA the agency finds that the proposed action will not significantly affect
24 the human environment, it may issue a finding of no significant impact ("FONSI") in lieu of an
25 EIS. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (citing
26 40 C.F.R. § 1508.9(a)(1)); *see also* 40 C.F.R. § 1501.6(e).

1 49. A FONSI “briefly present[s] the reasons why an action ... will not have a
2 significant effect on the human environment and for which an [EIS] therefore will not be
3 prepared.” 40 C.F.R. § 1508.1(1).

4 50. An agency may only rely on an EA to support its decision to conduct gathers for a
5 limited period, due to the immediacy requirement of the Wild Horse Act. 16 U.S.C. § 1333(b)(2);
6 *Friends of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022).

7 51. An agency may rely on an existing EA only if it determines, “with appropriate
8 supporting documentation, that it adequately assessed the environmental effects of the proposed
9 action and reasonable alternatives” in the existing EA.” *See* 40 CFR § 46.120(c). The “supporting
10 record must include an evaluation of whether new circumstances, new information, or changes in
11 the action or its impacts not previously analyzed may result in significantly different environmental
12 effects.” *Id.* The Secretary and BLM refer to this document generally as a Determination of NEPA
Adequacy.

13 **C. First Amendment to the U.S. Constitution**

14 52. The First Amendment prohibits any law “abridging the freedom of speech, or of
15 the press.” U.S. Const. Amend. I.

16 53. Finding that “many governmental processes operate best under public scrutiny,”
17 the Supreme Court has held that there is a qualified right of access for the press and public to
18 observe government activities. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8–9 (1986).

19 54. This Court has found that BLM’s removal of wild horses and burros and other
20 gather activities on public land meet the first part of the right of access claim—i.e., that a qualified
21 right of access applies to gather activities. *Leigh v. Salazar*, 954 F. Supp. 2d 1090, 1101 (D. Nev.
22 2013).

23 55. The Wild Horse Act further qualifies the right of access by declaring that the BLM
24 must conduct its removal, or gather, activities humanely.

25 **D. The Antelope and Triople B Complexes of Herd Management Areas**

26 56. The Antelope and Triple B Complexes are in northeastern Nevada. The Antelope

1 Complex encompasses several herd management areas where wild horses live. The Antelope
2 Complex contains the Antelope Valley HMA, Antelope HMA, Spruce-Pequot HMA, and Goshute
3 HMA. The Triple B Complex contains the Triple B HMA, Maverick-Medicine HMA, Antelope
4 Valley HMA (West of U.S. Highway 93), and Cherry Spring Wild Horse Territory (WHT).

5 57. Discrepancies exist in BLM documents regarding the exact number of acres
6 associated with the HMA in the Antelope and Triple B Complexes. The 2017 Antelope and Triple
7 B Complexes Gather Plan Environmental Assessment states that the total area for the Antelope
8 Complex consists of 1,183,340 acres of a mix of private and public lands, and the Triple B
9 Complex consists of 1,632,324 acres of a mix of private and public lands.

10 58. The topography is varied and contrasting with valley floors, alluvial fans, canyons,
11 mountains, steep ridges, and basins. Elevations within the Antelope Complex range from 5,000
12 feet to over 10,200 feet. The climate is typical of middle latitude, semi-arid lands. Precipitation
13 normally ranges from approximately five to seven inches on the valley bottoms to 16 to 18 inches on
14 the mountain peaks. Most of this precipitation comes during the winter months in the form of snow
15 occurring primarily in the winter and spring with the summers being quite dry. Temperatures range
16 from greater than 90 degrees Fahrenheit in the summer months to minus 15 degrees or colder in the
17 mountains in the winter.

18 59. There are hundreds of different species of wildlife in the Complexes including mule
19 deer, sage grouse, blue grouse, eagles, and hawks. The Complexes are also grazed by domestic
20 livestock.

21 60. During the 1900s to the 1940s, the Army Remount Service was active in a portion
22 of the Antelope/Antelope Valley Complex. Periodically, the Army would release animals in the
23 wild to upgrade their stock. The released stallions were mainly thoroughbreds or Morgans. A few
24 draft blood lines were introduced to develop a hardier strain of horse to pull wagons and heavy
25 artillery. As a result, the wild horses found in the complex are hardy and sound. They possess a
26 variety of colors with variations from white to black, but most are sorrels and bays.

61. The BLM has set an Appropriate Management Level, or AML, of 427-789 wild

1 horses in the Antelope Complex of HMAs and of 472-889 wild horses in the Triple B Complex.
2 An AML is like a quota for wild horses allowed by the BLM to exist in the only area designated
3 for them in the United States.

4 62. In 2017, the BLM conducted an emergency operation in part of the Antelope
5 Complex with the goal of reducing the wild horse population from an estimated 1,320 wild horses
6 to the then-AML of 155-259. To support its emergency removal action, the BLM adopted an
7 Environmental Assessment/Finding of No Significant Impact on December 21, 2017 (the “2017
8 EA/FONSI”).

9 63. Under the 2017 EA/FONSI, the BLM analyzed the environmental impacts of
10 removing thousands of wild horses and burros from the Antelope and Triple B Complexes over a
11 period of ten years. *See* DOI-BLM-NV-E030-2017-0010-EA.

12 64. The Gather EA did not identify or analyze the herd-specific foaling season, nor the
13 habitat-specific ground conditions during different seasons.

14 65. The BLM has purported to rely on the 2017 EA/FONSI to supports gathers in the
15 Antelope and Triple B Complexes that occurred in 2018, 2019, 2020, 2021, and 2022.

16 66. For each of these gathers, the BLM failed to issue a Determination of NEPA
17 Adequacy prior to relying on the EA/FONSI, as required by 43 CFR § 46.120.

18 67. The BLM’s decision to rely on a NEPA review that is now six years old violates
19 the Wild Horse Act’s immediacy requirement. 16 U.S.C. 1333(b)(2); *see also Friends of Animals*
20 *v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022) (holding “BLM’s ten-year deadline [in a wild horse
gather EA] exceeds its discretion, per statutory command”).

21 **E. Removal of Horses from the Antelope and Triple B Complexes**

22 68. Between January 31, 2017-February 23, 2018, the BLM gathered and removed
23 more than 1,300 horses by helicopter in the Triple B Complex. Between July 9-17, 2019, the BLM
24 gathered and removed more than 800 wild horses, including 134 foals, by helicopter in the Triple
25 B Complex. Between July 28-August 22, 2020, the BLM gathered and removed more than 350
26 wild horses, including 100 foals, by helicopter in the Triple B Complex. Between July 15-August

1 25, 2022, the BLM gathered and removed more than 1,500 wild horses, including 329 foals, by
2 helicopter in the Triple B Complex. At various times during these gathers, temperatures exceeded
3 95 degrees Fahrenheit.

4 69. Between September 19-October 2, 2018, the BLM gathered and removed more than
5 900 wild horses, including 165 foals, by helicopter in the Antelope Complex. Between August 10-
6 October 18, 2019, the BLM gathered and removed more than 900 wild horses, including 165 foals,
7 by helicopter in the Antelope Complex. Between July 27-July 28, 2020, the BLM gathered and
8 removed more than 50 wild horses, including 10 foals, by helicopter in the Antelope Complex.
9 Between August 2-30, 2021, BLM engaged in an “emergency” gather that resulted in the gather
10 of 2,203 wild horses, including 369 foals, by helicopter. Between July 9-August 20, 2023, the
11 BLM gathered and removed more than 3,000 wild horses, including more than 500 foals, by
12 helicopter in the Antelope Complex. At various times during these gathers, temperatures exceeded
13 95 degrees Fahrenheit. During the 2023 gathers, temperatures often exceeded 100 degrees
14 Fahrenheit.

15 70. The BLM proceeded with its removal of horses from the Antelope and Triple B
16 Complexes despite extreme heat and in direct contradiction of CAWP standards.

17 71. The BLM uses helicopters to roundup horses only if foals are not present, yet it
18 proceeded with its roundup of horses within the Antelope and Triple B Complexes aided by
19 helicopters even though it observed foals and was informed of the presence of foals.

20 72. Due to the extreme heat, inhumane and prohibited use of helicopters, and general
21 disregard for CAWP standards, the BLM admits that its removal actions in the Antelope and Triple
22 B Complexes have injured and killed at least 149 horses, including approximately 30 foals, as of
23 August 20, 2023. These include deaths resulting from fractured skulls, broken necks, leg fractures,
24 lacerations, and more.

25 73. The BLM has violated the CAWP standards and, if not enjoined by this Court, will
26 continue to do so in violation of the Wild Horse Act’s mandate that wild horses must be “humanely
captured and removed.” 16 U.S.C § 1333(b)(2)(B).

1 74. The CAWP standards set the floor for humane handling standards, and
 2 noncompliance with provisions labeled “minor” are ignored. BLM continually violates
 3 documenting procedures associated with recording deaths outlined in CAWP standards. The BLM
 4 has also violated the statutory requirement that wild horses be handled humanely, e.g. using
 5 helicopters to roundup horses after July 1, despite the actual, observed presence of foals. *See* 16
 6 U.S.C. 1333(b)(2)(B); 43 CFR 4700.0-5(e).

7 75. In addition to inhumanely treating wild horses during gathers, Defendants have
 8 failed to provide Plaintiffs consistent, meaningful viewing access of gather operations. During the
 9 2023 removal action in the Antelope Complex, Plaintiffs were denied access because BLM
 10 purposely placed trap areas on lands only accessible through private roads, even though the BLM
 11 knew it did not have permission for the public to utilize those roads to observe the roundup.

12 **FIRST CAUSE OF ACTION**
 13 **Administrative Procedures Act, 5 U.S.C. §§ 553, 702**

14 76. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
 15 though fully set forth herein.

16 77. According to the Administrative Procedures Act, “rule” means “the whole or a part
 17 of an agency statement of general or particular applicability and future effect designed to
 18 implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4).

19 78. The APA sets forth a number of requirements for the promulgation of rules,
 20 including notice-and-comment, to ensure the right of public participation in agency decision
 21 making. *See* 5 U.S.C. § 553.

22 79. The BLM’s CAWP Standards for Wild Horse and CAWP Burro Gathers and
 23 Standards for Off-Range Corral Facilities, Transportation, and Adoption/Sale Events implement
 24 the Wild Horse Act’s humane handling requirements and must be promulgated as rules. *See* 16
 25 U.S.C. § 1333(b)(2)(B) (emphasis added); 43 CFR 4700.0-05(e).

26 80. The BLM’s CAWP Standards for Wild Horse and CAWP Burro Gathers and
 Standards for Off-Range Corral Facilities, Transportation, and Adoption/Sale Events, in whole or

1 a part, qualify as “an agency statement of general or particular applicability and future effect
2 designed to implement, interpret, or prescribe law or policy” under the Administrative Procedures
3 Act, 5 U.S.C. § 551(4).

4 81. Defendants violated 5 U.S.C. § 553 by adopting the CAWP standards as an
5 unenforceable “agency policy,” as opposed to a rulemaking.

6 82. Defendants’ violation of the APA has injured Plaintiffs by restricting their ability
7 to enforce the BLM’s mandate to humanely capture and remove wild horses.

8 83. Defendants’ violation of the APA has injured Plaintiffs, who would have
9 passionately and robustly participated in the development of the CAWP standards had it been
10 properly promulgated as a rulemaking.

11 84. The APA gives this Court authority to compel the BLM to promulgate CAWP
12 standards as a rulemaking under 5 U.S.C. § 702.

13 **SECOND CAUSE OF ACTION**
14 **Administrative Procedures Act, 5 U.S.C. § 706**

15 85. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
16 though fully set forth herein.

17 86. The BLM may rely on an EA to support its decision to conduct gathers for a limited
18 period, due to the immediacy requirement of the Wild Horse Act. 16 U.S.C. § 1333(b)(2); *Friends*
19 *of Animals v. Culver*, 610 F. Supp. 3d 157 (D.D.C. 2022).

20 87. The BLM abused its discretion and violated the Wild Horses Act by relying on a
21 phased Environmental Assessment—the 2017 EA/FONSI—for multiple gathers in violation of the
22 Wild Horse Act’s immediacy requirement. *See Friends of Animals v. Culver*, 610 F. Supp. 3d 157
23 (D.D.C. 2022).

24 88. Defendants’ actions have injured Plaintiffs in the manner described in this
25 Complaint.

26 89. The BLM’s decision to rely on the 2017 EA/FONSI was arbitrary, capricious, an
abuse of discretion, or otherwise not in accordance with the law or was in excess of statutory

1 jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. § 706(2)(A) & (C).

2 90. The APA gives this Court authority to compel the BLM to promulgate CAWP
3 standards as a rulemaking under 5 U.S.C. §§ 553 and 702.

4 **THIRD CAUSE OF ACTION**

5 **National Environmental Policy Act and Administrative Procedure Act, 5 U.S.C. § 706**

6 91. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
7 though fully set forth herein.

8 92. The BLM may rely on an existing EA only if it determines, “with appropriate
9 supporting documentation, that it adequately assessed the environmental effects of the proposed
10 action and reasonable alternatives” in the existing EA.” *See* 40 CFR 46.120(c). The “supporting
11 record must include an evaluation of whether new circumstances, new information, or changes in
12 the action or its impacts not previously analyzed may result in significantly different environmental
13 effects.” *Id.* The Secretary and BLM refer to this document generally as a Determination of NEPA
Adequacy.

14 93. The BLM violated NEPA when it failed to evaluate the 2017 EA/FONSI pursuant
15 to 40 CFR 46.120. Had BLM assessed the environmental effects of the proposed gather and
16 reasonable alternatives, Plaintiffs would have expected evaluation of new circumstances, new
17 information, or changes such as those associated with the current foaling season, heavy snowfall
18 during the 2022-2023 winter, current range conditions, efficacy of growth suppression methods,
and more.

19 94. The BLM violated NEPA when it failed to analyze the significant environmental
20 impacts of removing wild horses from the Antelope Complex as alleged herein, including by
21 proceeding with the removal action, even though the BLM observed foals in the wild horse
22 population.

23 95. Defendants’ decision to proceed with the gather and removal of over 7,000 wild
24 horses from the Antelope and Triple B Complexes without analyzing significant environmental
25 impacts was arbitrary and capricious, an abuse of discretion, and contrary to the law.
26

1 96. Defendants' actions have injured Plaintiffs in the manner described in this
2 Complaint.

3 97. The BLM unlawfully withheld its evaluation of the 2017 EA/FONSI required by
4 40 CFR §46.120 in violation of the APA, 5 U.S.C. § 706(1).

5 98. The BLM's decision to rely on the 2017 EA/FONSI was arbitrary and capricious,
6 and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A).

7 **FOURTH CAUSE OF ACTION**
8 **First Amendment Violation, U.S. Constitution, 42 U.S.C. § 1983, 28 U.S.C. § 2201**

9 99. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as
10 though fully set forth herein.

11 100. Under 42 U.S.C. § 1983, a party may seek monetary and injunctive relief against a
12 party who, under color of law of any state, subjects any person within the jurisdiction of the United
13 States to a deprivation of any rights, privileges, or immunities secured by the Constitution and
14 other laws.

15 101. Plaintiffs have a right, under the First Amendment to the United States Constitution,
16 to observe and document the BLM's gather of the wild horses in the Antelope Complex, including
17 during gather operations, in capture pens, sorting pens, temporary holding corrals, and off-range
18 holding corrals where horses and burros are held for veterinary treatment and prepared for potential
19 adoption or sale or to live at long-term holding facilities.

20 102. These rights under the First Amendment to the United States Constitution have
21 been made enforceable against the states through the Fourteenth Amendment.

22 103. Defendants have interfered with Plaintiffs' protected right under the First
23 Amendment by preventing them from observing and documenting the BLM's gather of wild horses
24 in the Antelope Complex.

25 104. Defendants failure to humanely remove wild horses from the Antelope and Triple
26 B Complexes violates the Wild Horse Act, as well as Plaintiffs' right to view the animals being
treated humanely under the First Amendment of the United States Constitution.

1 viewing access of gather operations and by not allowing Plaintiffs their First
2 Amendment right to view wild horses being treated humanely;

- 3 D. Issue an order compelling Defendants to provide Plaintiffs with meaningful
4 viewing access of the gather operation, off-range holding corrals where gathered
5 horses and burros from the 2023 Antelope Complex operations are currently held,
6 and to each phase of future gather and removal efforts of horses and burros living
7 in the Antelope Complex, including trap sites, temporary holding corrals, and off-
8 range holding corrals;
- 9 E. Issue an order compelling Defendants to treat wild horses humanely during all
10 phases of removal activities, including by enforcing the CAWP standards'
11 prohibition on using helicopters for gathers during peak foaling season and
12 conducting gathers on days of excessive heat, as required by the Wild Horse Act,
13 16 U.S.C. § 1333(b)(2)(B); 43 CFR 4700.0-5(e), and First Amendment.
- 14 F. Maintain jurisdiction over this action until Defendants are in compliance with the
15 Wild Free-Roaming Horses and Burros Act, National Environmental Policy Act,
16 Administrative Procedure Act, First Amendment, and every order of this Court;
- 17 G. Award Plaintiffs compensatory damages for past mental or emotional injury
18 pursuant to 28 U.S.C. § 1983;
- 19 H. Award Plaintiffs attorney fees and costs pursuant to and 28 U.S.C. § 2412; and
- 20 I. Grant such additional and further relief to which Plaintiffs may be entitled.
- 21
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25
26

1 DATED: September 14, 2023

Respectfully Submitted,

2 /s/ Danielle M. Holt

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